

General Terms & Conditions for Hardware and Software Maintenance

1 Scope and validity

1.1 These General Terms & Conditions regulate the conclusion, content and performance of contracts for the maintenance of hardware and software.

1.2 These Terms & Conditions shall be deemed accepted upon the Company submitting an offer.

2 Offers

2.1 The offer and any demonstrations shall be made free of charge, unless it is otherwise stated in the request for offer.

2.2 The Company shall specifically point out all differences between the offer and the details of the Customer's request for offer.

2.3 The offer shall be binding for the period specified by the Customer. If no period is stipulated in the offer, nor in the request for offer, the Company's offer shall be considered binding for 4 months from the date it was made.

3 Scope of maintenance

3.1 Hardware maintenance covers servicing (preventive maintenance to safeguard operational reliability in accordance with an agreed maintenance plan) and corrective maintenance (fixing faults and errors so that normal service is resumed), through the repair or replacement of defective components or the installation of technical upgrades. Defective parts which are replaced shall revert to the ownership of the Company.

3.2 Software maintenance covers fixing faults in programs, adapting and enhancing software packages (new releases). At the request of the Customer and subject to separate remuneration, the maintenance shall also cover any adjustments required to enable standard software to run with different operating systems, databases and data storage devices.

3.3 If requested, the Company shall help to diagnose the cause of faults resulting from the interaction of several systems or components. If the Company can show that the fault was not caused by hardware or software for whose maintenance it is responsible, the Customer shall be billed separately for these services.

3.4 If requested, the Company shall also rectify faults whose causes can be traced back to errors on the part of the

Customer or third parties. These services shall be billed separately.

3.5 The Company shall keep the Customer regularly updated on the latest technical improvements and enhancements in the software which may be relevant to software and hardware maintenance. In particular, the Company shall notify the Customer of the consequences of any program modifications on the hardware. The Company may only proceed with the installation of technical upgrades and the supply or installation of enhanced programs with the Customer's approval.

4 Service hours, availability, response time and fault clearance

4.1 The Company shall provide a maintenance and repair service during the hours specified in the contract. The Company shall ensure it has adequate reserves of reliable spare parts, work materials and test equipment on hand.

4.2 During service hours the Company shall begin to repair the hardware, or rectify the software, as soon as possible, and not later than the times agreed in the contract. At the request of the Customer and subject to separate remuneration, the Company shall continue its maintenance work outside normal service hours.

4.3 The maximum time for successful completion of hardware repairs is specified in the contract.

4.4 Software faults shall be corrected, adopting temporary solutions if necessary, within a reasonable period of time.

5 Documentation and reporting

5.1 The Company shall update the relevant documentation as necessary.

5.2 After maintenance work is complete, the Company shall draw up a report to be signed by both parties. The report shall state the exact time and date when maintenance work began, the hardware was repaired, components/parts were replaced, and the duration of these tasks. The repair report shall also provide information on the time and date when the fault was first reported, the time that normal service was resumed and a description of the fault and its causes. This regulation does not apply to remote maintenance.

6 Performance of contract

6.1 The Company shall inform the Customer of any facts or circumstances which might significantly facilitate, reduce the cost of, complicate or even render impossible maintenance work.

6.2 Where necessary, the Customer shall provide the Company with available system documentation and any other documents relating to the system.

6.3 The Customer shall grant the Company the necessary access to his premises, and make arrangements as agreed for the supply of electricity and connections to the data network.

6.4 The Company shall comply with the Customer's company rules and regulations, particularly his safety standards and house rules.

7 Remuneration

7.1 The Company shall supply its services at a fixed recurring fee or at cost. It shall specify the cost types and rates in its offer.

7.2 The remuneration shall cover all services required for due fulfilment of the contract. In particular, it shall include spare parts, installation and documentation, packaging, transport, travel and insurance costs, expenses and any fiscal or other public duties.

7.3 The Company may ask for an increase in the remuneration for its services to take effect at the start of the next calendar year, as long as it justifies the increase and gives three months' notice. The increase shall not exceed the corresponding rise in the Swiss Index of the Cost of Consumer Goods.

7.4 Payments shall be made in accordance with the payment schedule. When a payment is due, the Company shall submit a request for payment to the Customer. The Customer shall settle within 30 days after receipt of the request for payment.

7.5 If the Company offers a discount on any of its services, and if the government, its institutions and enterprises co-ordinate the conclusion of similar contracts, the basis used to calculate the price shall include the total volume of services contained in all these contracts.

8 Changes to services

8.1 The Customer may ask for the agreed services to be modified. The Company shall advise the Customer in writing within one month whether or not it is prepared to make the desired changes and on what terms. The Customer shall then decide within one month whether or not the changes are to be accomplished.

8.2 Any changes to services and modifications to remuneration, deadlines or other aspects of the contract shall be agreed in writing in an amendment to the contract before they are performed. Changes to the remuneration shall be calculated according to the rates in the original cost calculations.

8.3 Except where agreed to the contrary, the Company shall continue its normal scheduled work whilst proposed changes are under review.

9 Confidentiality

9.1 Both parties shall treat in strict confidence all matters which are not publicly known or generally accessible. If there is any doubt, this confidentiality clause shall nevertheless be observed. The parties are obliged to observe this confidentiality clause both before the contract is signed and after the contractual relationship ends. This provision does not affect either party's legal obligation to disclose information.

9.2 If either party violates the above confidentiality obligations, he shall be liable to pay a contract penalty, unless he can prove that no fault is attributable to him. This penalty shall amount, for each infringement, to a year's remuneration at the time of infringement, with a maximum of CHF 50,000 per infringement. Paying the contract penalty shall not release the party from his obligation to observe confidentiality. However, the penalty shall count towards any compensation payable.

10 Deployment of staff

The Company shall only entrust maintenance work to thoroughly trained specialists with the necessary hardware and software expertise. It shall oblige its staff to respect the Customer's company rules and regulations, particularly his safety standards and house rules.

11 Default

11.1 If the parties have, in the written contract, agreed upon an exact deadline for performance, the party which does not meet the deadline so fixed shall be in default immediately upon the expiration of such deadline. As to due dates not agreed upon as fixed, a party shall be in default only after being reminded thereof and after expiration of a reasonable time extension to be granted by the other party.

11.2 If the Company fails to meet the deadline for successfully rectifying a fault during hardware maintenance, it shall be liable to pay a contract penalty unless it can prove that no fault is attributable to it. This penalty shall be per contract CHF 500 per hour of delay, but not more than a year's remuneration at the time of the delay, and limited to the hardware and software which, owing to the delay, cannot be used as expected. The contract penalty shall be payable even if the services are accepted without reservation. Paying the con-

tract penalty shall not release the Company from its contractual obligations. However, the penalty shall count towards any compensation payable.

12 Warranty

12.1 The Company warrants the careful and successful performance of its services. It shall not be liable for warranty in cases where the Customer is at fault.

12.2 If servicing and maintenance are not successful, the Customer may initially only demand an improvement free of charge. The Company shall undertake the necessary action immediately and entirely at its own expense, including the manufacturing of particular parts where this is necessary.

12.3 If the Company does not undertake or successfully complete the improvement, the Customer has the options of:

- reducing the amount of remuneration payable to the Company to be compensated for the reduction in value; or
- withdrawing from the contract, however only in the case of material defects; or
- requesting delivery of the necessary documentation and material (especially the source code), where this is legally and contractually possible, and making the necessary adjustments himself or commissioning a third party to do so at the Company's cost and risk. This shall only apply in the case of material defects.

The warranty rights shall be time barred one year after the performance of the maintenance work. Defects shall be notified immediately upon their detection.

13 Liability

13.1 Each party shall be liable for any damages arising from failure to meet deadlines or due dates (default), unless he proves that no fault is attributable to him. The party shall be liable for any fault, i.e. intent and all degrees of negligence. Liability shall not exceed the amount of damages which have actually arisen. The liability for default shall be limited to 20% of the annual remuneration for maintenance of the software or hardware which, due to the delay, cannot not be used as expected; should the annual fee amount to less than CHF 250,000, liability shall not be reduced to less than CHF 50,000. Further statutory rights arising from waiving future performance or from holding to the contract shall be reserved. In any case, claims for the loss of anticipated profit are excluded from liability.

13.2 If any damage arises as a result of careless performance of the services or because these were not successful, the Company shall pay compensation unless it proves that no fault is attributable to it. The Company shall be liable for any fault, i.e. intent and all degrees of negligence. Liability shall not exceed the amount of damages which have actually arisen. Liability for personal injury shall be unlimited. Liability for damage to property shall be limited per contract to 300% of the annual fee; liability shall however not be

reduced to less than CHF 100,000. Liability for purely pecuniary damage shall be limited per contract to the amount of the annual fee; liability shall however not be reduced to less than CHF 50,000. The basis for the calculation of the annual fee shall be the hardware and software which, because of the damage concerned, cannot be used as expected. In any case, claims for the loss of anticipated profit are excluded from liability.

13.3 Each party shall be liable for other breaches of contract (e.g. breach of confidentiality, violation of the obligation to inform the other party, the use of a subcontractor without permission of the Customer, violation of general obligations of loyalty and due diligence), unless the party proves that no fault is attributable to him. The parties shall be liable for any fault, i.e. intent and all degrees of negligence. Liability shall not exceed the amount of damages which have actually arisen. Liability shall be limited per contract to the amount of the annual fee; liability shall however not be reduced to less than CHF 50,000. In any case, claims for the loss of anticipated profit are excluded from liability.

13.4 Both parties shall be liable for the acts of their auxiliary persons and subcontractors as if they had carried out such acts personally.

14 Duration of contract

14.1 If the maintenance and service contract is concluded for an indefinite period, it may be terminated at any time, as long as this does not conflict with existing maintenance and service obligations ensuing from contracts for the procurement of hardware and software. Individual clauses of the contract may also be terminated. The period of notice is 12 months for the Company and 1 month for the Customer.

14.2 Maintenance and service contracts may be terminated without notice if the other party is in severe breach of contract. In such cases the remuneration shall be payable on a pro-rata basis. This shall not affect any entitlement to damages.

15 Import certificates

When the Customer accepts services, he shall also assume the Company's obligations arising from import certificates.

16 Place of performance

The place of performance for the services provided by the Company shall be the location where the hardware and software is installed.

17 Assignment and pledging of receivables

Receivables due to the Company may not be assigned or pledged to third parties not affiliated with the Company without the written agreement of the Customer.

18 Observation of health and safety standards, conditions of employment, equal treatment of the sexes in relation to salary

18.1 Where contractual duties are performed in Switzerland, the Company shall grant to its employees health and safety standards as well as conditions of employment in force or usually practised at the place of performance. It shall ensure that women and men are treated equally with respect to their salaries. Conditions of employment shall be those contained in the respective collective employment contracts or in standard employment contracts, or, in the absence of these, the employment conditions which are usually granted at the place of performance or in a particular profession. The Company shall contractually impose these duties upon its subcontractors.

18.2 Should the Company violate these obligations, it shall be liable to pay a contract penalty unless it proves that no fault is attributable to it. The penalty shall amount per case to 10% of the total remuneration, though to no more than CHF 50,000 per case.

19 Applicable law

19.1 The contractual relationship between the two parties shall be governed by Swiss law.

19.2 The provisions of the Vienna Convention (the United Nations Convention of Contracts for the International Sale of Goods, concluded in Vienna on 11.4.1980) shall not be applicable.

20 Special provisions regarding "Year 2000 Conformity"

20.1 The maintenance of hardware and software as stipulated in paragraph 3.1 and 3.2 shall comprise the achieving, restoring and preserving of "Year 2000 Conformity" of the hardware (including pertaining operating system software) and software, without any additional remuneration, unless otherwise stipulated in the contract.

20.2 The Company shall, within 9 months after conclusion of the maintenance agreement,

- in servicing and/or corrective maintenance of the hardware and/or
- in fixing faults in programs, adapting or enhancing software packages (new releases)

ensure full "Year 2000 Conformity" of products to be maintained.

20.3 Should the maintenance contract be concluded after 1.1.1999, the Company shall achieve "Year 2000 Conformity" within 3 months after conclusion of the contract, though at the latest by 1.6.1999.

20.4 The company shall conclusively demonstrate that the products to be maintained comply with the "Year 2000 Conformity" requirements. The parties shall agree on the procedure.

20.5 "Year 2000 Conformity" shall mean that neither the performance nor the functionality of products to be maintained shall be impaired by the alteration of date formats or date values. This shall apply to all valid date values prior to, during and after the year 2000.

20.6 "Year 2000 Conformity" shall especially also mean that

- no current date value may interrupt or impair the functioning of products to be maintained;
- the processing of data linked to dates prior to, during and after the year 2000 shall produce the required results for all date values. If contractually stipulated, this shall also apply to the combination with additional products;
- all elements relevant to the specification of dates contained in interfaces and data storage shall unambiguously and without human interference allow the specification of the century, in order to preclude any ambiguity. This shall also apply to the computation of leap-years;
- if elements of dates (e.g. the information of the year) should be represented in a format which does not indicate the century, the latter shall be inferred unambiguously from dates so represented, consistently through all processing of date values or data containing a date-reference.

20.7 "Date format" shall mean a field configuration which contains information about date values (e.g. information about days, weeks, months, years, centuries) in any part of the products (hardware, software and complete data systems) to be maintained.

20.8 A „valid date value“ shall mean a value within a value range defined in the functional specification or which may be assumed in good faith.

20.9 In connection with „Year 2000 Conformity“ the Company shall be liable for warranty as stipulated in paragraph 12 and 13 of these General Terms & Conditions, with the special provision that warranty rights in connection with „Year 2000 Conformity“ requirements shall only be time barred on 1 January 2002.

Original: German

In case of disputes the German text shall prevail.